IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/07/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.21724 OF 2003
AND
CRL.M.P.No.6234 OF 2003.

M.Kalanithi Maran ... Petitioner

-Vs-

State, by
The Inspector of Police,
CBCID, Metro, Chennai.
(Crime No.714 of 2001) ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief extracted supra.

For petitioner : Mr.K.Asokan,
senior counsel for
Mrs.Gita Asokan

For respondent : Mr.I.Subramaniyam,
Public Prosecutor,
High Court, Madras.

:O R D E R

The above criminal original petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to call for the records and quash the written order of the respondent issued under Section 91 Cr.P.C., dated 4.7.2003.

2. Petitioner, who is the Managing Director of the Sun TV Limited, is the accused in the above case registered by the respondent for the offences punishable under Sections 120-B r/w.417 and 153 IPC. The charge against him is that when Mr.M.Karunanidhi,the former Chief Minister of the Government of Tamil Nadu, was arrested in the wee hours of 30.6.2001, from the morning of 30.6.2001, the SUN TV was continuously telecasting news as if Mr.Karunanidhi was attacked and manhandled by the Police at the instance of the State Government and there was a deliberate human rights violation in his arrest and that the SUN TV edited the entire recorded events, inserted dubbing voices and misrepresented the entire facts with the deliberate intention of

creating hatred in the mind of the public towards the State Police and the Government of Tamil Nadu headed by the Chief Minister Selvi J.Jayalalitha; that though the misconduct on the part of two Union Ministers was also recorded by the SUN TV it did not telecast the attack on the police officials by them and the extreme patience shown by the police officials who arrested the former Chief Minister and because of such distorted news telecasted by the SUN TV, violence took place in many parts of the State in which hundreds of transport buses suffered damage and the fear psychosis was also created in the mind of the general public.

3. During the course of investigation, the Inspector of Police, Crime Branch CID, Metro Wing, Chennai has sent an order purported to be under Section 91 Cr.P.C. thereby directing the petitioner to produce the following documents on or before 14.7.2003 before the said Officer at 10.00 am.:

1.The Video Cassettes (Master Copy) taken on 29.6.2001 by the SUN TV crew members at the time of effecting the arrest of Thiru M. Karunanidhi at his residence by CBCID.

2.Furnish the names, designation and address of the crew members of SUN TV, who were all involved in taking the videograph and telecasting the above event.

4. In these circumstances, the petitioner has come forward to file the above criminal original petition seeking the relief sought for on ground that in issuing the impugned order, the respondent has exceeded his jurisdiction in directing the petitioner to cause production of the documents mentioned in the said order; that a reading of Section 91 Cr.P.C. would clearly reveal that the words used therein are ' the person' and not an 'accused person' and therefore the respondent cannot invoke his powers under Section 91 Cr.P.C. against an accused person; that the Honourable Supreme Court has held that the 'person' referred to in Section 91 Cr.P.C. does not include 'an accused person' and therefore he cannot be compelled to produce documents or information pursuant to a written order by a police Officer under Section 91 Cr.P.C.

5. During arguments, the learned senior counsel appearing on behalf of the petitioner, besides adhering to the facts pleaded in the above Criminal O.P., would also cite four judgments in consummation of the meaning of the terms 'the person' as employed in Section 91 Cr.P.C. which does not include 'an accused person'. The first judgment cited is one reported in STATE OF GUJARAT v. SHYAMLAL MOHANLAL CHOKSI (196 5 M.L.J. (Crl.) 417) wherein the Larger Bench of the Hon'ble Apex Court by majority held that "section 94 of the Criminal Procedure Code (old Code and presently Section 91) on its true construction does not apply to an accused person. Consequently, in exercise of powers under section 94(1) Cr.P.C., a Court has no authority to summon a person accused of an offence before it to produce a document or a thing in his possession.... It would be still more odd for a Police Officer to issue a written order to an accused person in his custody to " attend and produce" a document". Further, if section 94 Cr.P.C. is construed to include accused person, it is likely to lead to grave hardship for the accused and

make investigation unfair to him."

6. The second judgment cited by the learned Senior counsel is one reported in RAMASWAMI IYER v. S. SUBRAMANIAM (1990 L.W. (crl.) 484) wherein a learned single Judge of this Court, following the above judgment of the Supreme Court cited supra, has held that "once it is clear that the law of the land is that section 91 of the Criminal Procedure Code on its true construction does not apply to an accused person under trial, this petition will have to be necessarily allowed."

7. In the third judgment cited, reported in SURYA NARAYANAN & ANOTHER v. M.V. VIJAYAN ((1995) M.L.J. CRL.240) also, a learned Single Judge of this Court has discredited the Court mechanically ordering production of documents in the custody of the Personal Manager and Supervisor of hotel regarding the offence committed in their official custody.

8. The last judgment cited in support of the case of the petitioner is one reported in K. SENTHAMARAI & OTHERS v. STATE, BY INSPECTOR OF POLICE, CB.CID, KAMARAJAR DISTRICT & OTHERS (1998(1) CRIMES 319) wherein also following the Apex Court judgment, extracted supra, a learned Single Judge of this Court has held that section 91 Cr.P.C. does not apply to an accused person in the case of the Magistrate issuing summon to the accused to produce documents which are not only incriminated, but also likely to be incriminated.

9. On such arguments, learned counsel for the petitioner would pray to quash the written order of the respondent dated 4.7.2003.

10. On the contrary, the learned Public Prosecutor, High Court, Madras appearing on behalf of the respondent, citing Article 23 of the Constitution of India wherein prohibition is created regarding traffic in human beings and all forms of host labour but authorises the State to impose compulsory service for the public purpose and would pose a question that is there any prohibition created against summoning any accused to cause production of document or other thing which is necessary or desirable for the purpose of an Officer investigating, enquiring or conducting the trial or other proceedings under the Code of Criminal Procedure?

11. At this juncture, learned Public Prosecutor would cite the judgment reported in STATE OF GUJARAT v. SHYAMLAL MOHANLAL CHOKSI (A.I.R. 1963 GUJARAT 178) wherein it is held:-

If an accused produces a document in his possession that would not offend Article 20 clause (3) unless the document contains statements based on the personal knowledge of the accused, because he does not become a witness by the mere fact that he has produced it.

But, there is no denying of the fact on the part of the learned Public Prosecutor that the Apex Court's judgment cited by the learned senior counsel for the petitioner reported in 1965 M.L.J. (Crl.) 417 has arisen only from this case on appeal wherein the Honourable Apex Court has confirmed the

proposition held by the Gujarat High Court in the above judgment.

12. Learned Public Prosecutor would also cite yet another judgment reported in A.I.R.1978 S.C. 1025 (NANDINI SATPATHY VS. P.L.DANI) wherein the Full Bench of the Hon'ble Apex Court has held:

"Under S.161 Cr.P.C. 'any person' includes the accused thus enabling the police to examine the accused during investigation, but the prohibitive sweep of Art.20(3) of the Constitution goes to the stage of police investigation not commencing in Court only. In fact, the provisions of Art.20(3) and S.161(2) substantially cover the same area so far as police investigations are concerned. The ban on selfaccusation and the right to silence, while an investigation or a trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter."
"Compelled testimony' is evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like. A police officer is clearly a person in authority and insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing duress are adhered to."
"Legal penalty for refusing to answer or answer truthfully may by itself not amount to duress. It cannot be regarded as compulsion under Art.20(3). But, frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Art.20(3). The manner of mentioning it to the vi ctim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion."

13. The learned Public Prosecutor would also submit that the case above first cited by the learned senior counsel for the petitioner has been decided by a larger Bench of Five Judges, but the same has also been considered by still a Larger Bench of seven Judges in a different manner and therefore, the judgments cited on the part of the learned senior counsel appearing for the petitioner reported in (1965) MLJ (Cri) 417 is not a conclusive one. On such arguments, the learned Public Prosecutor would pray to dismiss the above Criminal Original Petition.

14. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the short legal question that arises for determination is pertaining to the notice issued by the respondent under Section 91 of Cr.P.C. seeking to cause production of the items mentioned in para No.3 supra.

15. The contention of the petitioner is, that 'the person' mentioned in Section 91 of Cr.P.C. is not an 'accused person' but some one else and since the petitioner being the accused in the case registered by the respondent for specific offences alleged to have been committed and therefore, the respondent cannot invoke his powers under Section 91 of Cr.P.C. against the petitioner who is the accused in this case.

16. Even though on the part of the learned Public Prosecutor,

he would cite from the case reported in A.I.R.1978 SC 1025, wherein the Full Bench of the Hon'ble Apex Court has held that under Section 161 of Cr.P.C. 'any person' includes the accused person also thus enabling the police to examine the accused during investigation, still, the case cited on the part of the learned senior counsel appearing on behalf of the petitioner reported in (1965) MLJ (Crl) 417 (STATE OF GUJARAT V. SHYAMLAL MOHANLAL CHOKSI) is direct to the point dealing with Section 91 Cr.P.C. with which the subject matter is concerned, wherein it has been held by the Hon'ble Apex Court in no uncertain terms, while answering the point, that the term 'the person' employed in Section 91 Cr.P.C. does not include the 'accused person' true to its construction and therefore, adhering to the said judgment of the Hon'ble Apex Court, this Court has to only answer that the respondent has no authority or reason to summon the petitioner who is an accused in the case in which summons have been sent to cause production of those materials mentioned supra and hence the following order:

In result,
(i) the above Criminal Original Petition succeeds and the same is allowed.

(ii) The notice sent by the respondent to the petitioner under Section 91 of Cr.P.C. dated 4.7.2003 requiring the petitioner to cause production of the documents/articles and particulars as detailed therein is quashed.

Consequently, Crl.M.P.No.6234 of 2003 is closed.

Index:Yes
Internet:Yes

gr/Rao

To

1.The Inspector of Police,
CBCID, Metro, Chennai.

2.The VII Metropolitan Magistrate,
George Town, Chennai.

3.The Public Prosecutor,
High Court, Madras.

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